

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

_____	)	
MERRIMACK COUNTY REPUBLICAN	)	
COMMITTEE,	)	
KAREN TESTERMAN,	)	
PATRICIA JORGENSEN,	)	
DAVID TESTERMAN, and	)	
NIKKI MCCARTER,	)	
	)	
Plaintiffs	)	
	)	
v.	)	Case No. 1:24-cv-00020-LM-AJ
	)	
DAVID SCANLAN, SECRETARY OF STATE	)	
FOR NEW HAMPSHIRE	)	
and CHRIS AGER, NEW HAMPSHIRE	)	
REPUBLICAN STATE COMMITTEE,	)	
	)	
Defendants.	)	
_____	)	

**RESPONSE OF CHRIS AGER AND NEW HAMPSHIRE REPUBLICAN  
STATE COMMITTEE TO PLAINTIFFS' NOTICE: DEMAND FOR  
CORRECTION OF DOCKET ENTRY**

Defendants Chris Ager and the New Hampshire Republican State Committee, (individually, the "State Committee" and, jointly with Mr. Ager, the "NHRSC"), by and through their attorneys, Cleveland, Waters and Bass, P.A., hereby respond to the plaintiffs' notice for correction of docket entry.

Plaintiffs have requested the court to remove the State Committee from the docket based on their assertion that they are not suing the State Committee. *See* Doc. No. 16. Rather, plaintiffs assert only Mr. Ager is being sued in his individual capacity. *Id.* The complaint, however, purports to bring suit against "Chris Ager, an individual... and also in His Official Capacity as the duly-

elected Chair of the New Hampshire Republican State Committee.” Doc. No. 1 at ¶21. Suing Mr. Ager, based on actions or inactions plaintiffs allege he was required to undertake as chair of the state committee, is tantamount to suing the State Committee. *See Stiles v. Dearborn*, 6 N.H. 145, 146 (1833); *see also Conway v. New Hampshire Water Resources Bd.*, 89 N.H. 346 199 A. 83, 86 (1938) (“a suit against those representing the state is one against the state when a judgment or decree against them would have the same effect as though it were directly against the state”). While Mr. Ager is not a state actor, these cases are nonetheless applicable where Mr. Ager’s relationship to the NHRSC is analogous to that of a state agency’s representative and the agency.

The NHRSC is not opposed to the NHRSC being dismissed from the lawsuit. Such dismissal necessarily requires, however, a stipulation from plaintiffs that the State Committee is not a party to the lawsuit and that any claims against it, or against Mr. Ager in his official capacity or individual capacity, are dismissed with prejudice.

Respectfully submitted,

CHRIS AGER, NEW HAMPSHIRE  
REPUBLICAN STATE COMMITTEE,  
By Their Attorneys,

Date: February 12, 2024

/s/ Jacob M. Rhodes  
Bryan K. Gould, Esq. (NH Bar #8165)  
gouldb@cwbp.com  
Jacob M. Rhodes, Esq. (NH Bar #274590)  
rhodesj@cwbp.com  
CLEVELAND, WATERS AND BASS, P.A.  
Two Capital Plaza, Fifth Floor  
Concord, NH 03301  
Telephone: (603) 224-7761  
Facsimile: (603) 224-6457

CERTIFICATE OF SERVICE

I hereby certify that the within document is being served electronically through the court's electronic filing system upon counsel of record and all other parties who have entered electronic service contacts in this docket. In addition, the following parties have been served by email and U.S. Mail:

Karen Testerman ([karen@karentesterman.com](mailto:karen@karentesterman.com))  
9 Stone Avenue  
Franklin, NH 03235

David Testerman ([dave@sanbornhall.net](mailto:dave@sanbornhall.net))  
9 Stone Avenue  
Franklin, NH 03235

Nikki McCarter ([nikki.mccarter@leg.state.nh.us](mailto:nikki.mccarter@leg.state.nh.us))  
107 North Main Street  
Concord, NH 03301

Patricia Jorgensen ([yellaboat@aol.com](mailto:yellaboat@aol.com))  
26 Twin Bridge Road  
Northfield, NH 03276

Date: February 12, 2024

/s/ Jacob M. Rhodes  
Jacob M. Rhodes, Esq.